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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/568,506

02/16/2006

Roberto Trebbi

023349-00315

1162

4372 7590 06/05/2009  
ARENT FOX LLP  
1050 CONNECTICUT AVENUE, N.W.  
SUITE 400  
WASHINGTON, DC 20036

EXAMINER

TAWFIK, SAMEH

ART UNIT

PAPER NUMBER

3721

NOTIFICATION DATE

DELIVERY MODE

06/05/2009

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

DCIPDocket@arentfox.com  
IPMatters@arentfox.com  
Patent\_Mail@arentfox.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/568,506	<b>Applicant(s)</b> TREBBI, ROBERTO	
	<b>Examiner</b> Sameh H. Tawfik	<b>Art Unit</b> 3721	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 27 April 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-15 is/are pending in the application.
- 4a) Of the above claim(s) 6-8 and 13 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-5,9-12,14 and 15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3-5, 9-12, 14, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over the admitted prior art (Background of the invention) in view of Trebbi (U.S. Patent No. 6,327,835).

Applicant has admitted that a capsule filling machine is old and well known (Background Art; specification page 1, lines 12-21). The admitted art does not disclose detecting means for checking out a quantity of pharmaceutical material filled into the capsule body by having a volume transducer element for measuring a volume/height of the quantities before they are inserted into the capsule bodies. However, Trebbi discloses a similar machine with the use of detecting/checking means to check out quantity of material filled into capsules body by having a volume transducer element for measuring a volume/height of the quantities before they are inserted into the capsule bodies (Fig. 1, via metered amounts/volume D then moving D into portion C1 of the capsule; column 3, lines 53-60; column 7, lines 43-61; and abstract).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified applicant's admitted prior art by the use of detecting/checking means, as suggested by Trebbi, in order to control and measure the exact needed quantity to the capsules.

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Regarding claims 2-5 and 9-12: Trebbi discloses the use of detecting means/checking means comprise checking disc, chambers, transducer means, closing and opening bottom of the chamber, control and processing unit, see for example (Figs. 1 and 2).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified applicant's admitted prior art by using of detecting means/checking means comprise checking disc, chambers, transducer means, closing and opening bottom of the chamber, control and processing unit, as suggested by Trebbi, in order to control and measure the exact needed quantity to the capsules.

### ***Response to Arguments***

Applicant's arguments filed 04/27/2009 have been fully considered but they are not persuasive.

Applicant argue that Trebbi '835 does not measure a volume of the quantities of the pharmaceutical material before they are inserted into the capsule bodies, rather the pressing thrusters transducers measure resistance of the already filled material. The examiner maintains that '835 measures the volume of the quantities of the material prior to inserting it into the capsule bodies, as metering/specify volume amount D been identified prior to the insertion into capsule part C1, see for example Fig. 1.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sameh H. Tawfik whose telephone number is 571-272-4470. The examiner can normally be reached on Tuesday - Friday from 9:00 AM to 7:30 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Sameh H. Tawfik/  
Primary Examiner, Art Unit 3721